

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

JOHN B. KOCH,)	
)	
Plaintiff,)	
)	
v.)	No. 05-3447-CV-S-FJG
)	
JO ANNE BARNHART,)	
Commissioner, Social Security)	
Administration)	
)	
Defendant.)	

ORDER

Currently pending before this Court is plaintiff's application for leave to file a civil action in forma pauperis (Doc. # 1). Pursuant to 28 U.S.C. § 1915, this Court may authorize the commencement or prosecution of any suit without prepayment of fees when an applicant files an affidavit stating that he is unable to pay the costs of the lawsuit. In Martin-Trigona v. Stewart, 691 F.2d 856, 857 (8th Cir. 1982), the court noted:

There is a two step process to be followed by the district court in considering whether a pro se plaintiff should be permitted to proceed in forma pauperis. First, a determination of whether the plaintiff qualifies by economic status under § 1915(a) and, if so, to permit the complaint to be filed. Second, a determination of whether the cause of action stated in the complaint is, under § 1915([e]), frivolous or malicious and, if so, to dismiss the complaint.

The district court must exercise its discretion in determining whether an applicant is sufficiently impoverished to qualify under § 1915. Cross v. General Motors Corp., 721 F.2d 1152, 1157 (8th Cir. 1983), cert. denied, 466 U.S. 980 (1984). Such showing of poverty is sufficient if the applicant would become completely destitute or be forced to

give up the basic necessities of life if required to pay the costs of the lawsuit. Adkins v. E.I. Du Pont de Nemours & Co., 335 U.S. 331, 339 (1948); Local Rule 83.7(a) (1999).

Plaintiff's affidavit reveals that he is 50, married with no dependents. Plaintiff is not presently employed and lists no previous employment. Plaintiff's spouse is employed by Conoco earning \$210.00 a week. Plaintiff does not own any real property but does own one vehicle worth \$1,000. Plaintiff states that he has \$400 cash on hand. Plaintiff receives a VA pension of \$1000 a month and his wife receives social security benefits of \$319.00 a month. Plaintiff lists his monthly obligations as \$325.00 for rent, \$300 for household expenses, \$450.00 for groceries and between \$150 and \$250 for electricity.

Based upon the information provided in plaintiff's affidavit, the Court believes that plaintiff is not sufficiently impoverished to be permitted to proceed in forma pauperis. Therefore, the Court hereby **DENIES** plaintiff's application for leave to file this civil action in forma pauperis. If plaintiff wishes to file his Complaint, he shall pay the filing fee within thirty (30) days of the date of this Order.

/S/ FERNANDO J. GAITAN JR.
Fernando J. Gaitan, Jr.
United States District Judge

Dated: October 24, 2005
Kansas City, Missouri